LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
NOV 21 1966
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

October Term, 1966
Number 634

MINISTERS LIFE AND CASUALTY UNION,

Appellant,

vs.

ROBERT D. HAASE, Commissioner of Insurance, and BRONSON C. LA FOLLETTE, Attorney General of the State of Wisconsin,

Appellees.

Appeal From the Supreme Court of the State of Wisconsin.

Brief of the State of California, Amicus Curiae, in Support of Appellees' Motion to Dismiss Appeal.

THOMAS C. LYNCH,
Attorney General,
H. WARREN SIEGEL,
Deputy Attorney General,
600 State Building,
Los Angeles, Calif. 90012,
Attorneys for Amicus Curiae.

Parker & Son, Inc., Law Printers, Los Angeles. Phone MA. 6-9171.

SUBJECT INDEX

Page

Interest of the Amicus Curiae 1

Argument 3

I.

A state may regulate insurance business done within its borders 3

A. The historical context of the meaning of "doing business" 3

B. The effect of the McCarran Act and the Todd Shipyards case on the definition of "doing business" under the due process clause 4

II.

Regulation by Wisconsin of the solicitation and negotiation in Wisconsin of insurance business does not offend the due process clause of Amendment Fourteen to the United States Constitution even though the solicitation is sent into Wisconsin by mail from another state 6

A. The solicitation and negotiations of a mail transaction occurs where the mail is received 6

B. In the Todd, Allgeyer, St. Louis Compress, and Conn. general cases the companies did no business in the regulating state by mail or otherwise 8

C. Hoopeston and Todd discussed and compared 11

D. Minnesota Commercial Men's Assn. v. Benn discussed and distinguished 14

Conclusion 18

TABLE OF AUTHORITIES CITED

Cases	Page
Allegeyer v. Louisiana, 165 U. S. 578	3, 4, 5, 6, 8, 9, 10, 11, 13, 14, 15, 16
Bothwell v. Buckbee, Mears Co., 275 U.S. 274	9, 15
Commonwealth v. Long, 1 Pa. County Ct. 190	7
Conn. General Co. v. Johnson, 303 U.S. 77	3, 10
F.T.C. v. Travelers Health Assn., 362 U.S. 293	17
Golden & Co. v. Justice Court, 23 Cal. App. 778, 140 Pac. 49	7
Hooper v. California, 155 U.S. 648	3, 4
Hoopeston Canning Co. v. Cullen, 318 U.S. 313	3, 5, 6, 11, 12, 13, 14, 16
Karvalsky v. Becker, 29 N.E. 2d 560	7
Locknane v. United States Savings & Loan Co., 44 S.W. 977	7
Minnesota Commercial Men's Assn. v. Benn, 261 U.S. 140	14, 15, 16
Osborn v. Ozlin, 310 U.S. 53	3, 5
Palliser, In re, 136 U.S. 257	6
Paul v. Virginia, 75 U.S. (8 Wall.) 168	3, 4
People v. Fairfax Family Fund, Inc., 235 Cal. App. 2d 881, 47 Cal. Rptr. 812, app. dis. 382 U.S. 1	7
People v. Sansom, 37 Cal. App. 435, 173 Pac. 1107	7
Prudential Ins. Co. v. Benjamin, 328 U.S. 408	4
Robertson v. California, 328 U.S. 440	7, 13, 14
Rose v. State, 62 S.E. 117	7
St. Louis Compress Co. v. Arkansas, 260 U.S. 346	3, 5, 9, 10, 13

Page

State Bd. of Ins. v. Todd Shipyards, 370 U.S. 451 ..... 2, 4, 5, 9, 10, 13, 14

State Board of Insurance v. Todd Shipyards Corp., 340 S.W. 2d 339 ..... 5, 9

State Board of Insurance v. Todd Shipyards Corp., 343 S.W. 2d 241 ..... 5, 9

Travelers Health Assn. v. Virginia, 339 U.S. 643 ..... 3, 16, 17

United States v. Southeastern Underwriters Assn., 322 U.S. 533 ..... 3, 4

United States v. Steinberg, 62 F. 2d 77 7

United States v. Thayer, 209 U.S. 39 6

Watson v. Employers Liability Assur. Corp., 348 U.S. 66 14

Statutes

California Financial Code, Sec. 24200 7

United States Code, Title 15, Secs. 1011-15 ..... 2, 4

United States Constitution, Fourteenth Amendment 2, 4

IN THE

Supreme Court of the United States

October Term, 1966
Number 634

MINISTERS LIFE AND CASUALTY UNION,

Appellant,

vs.

ROBERT D. HAASE, Commissioner of Insurance, and BRONSON C. LA FOLLETTE, Attorney General of the State of Wisconsin,

Appellees.

Appeal From the Supreme Court of the State of Wisconsin.

Brief of the State of California, Amicus Curiae, in Support of Appellees' Motion to Dismiss Appeal.

INTEREST OF THE AMICUS CURIAE.

The State of California, acting by and through Thomas C. Lynch, Attorney General, files this brief, as amicus curiae, on behalf of the State of Wisconsin and in support of the Motion To Dismiss Appeal filed herein.

It is not the purpose of this brief to discuss the facts in the *Ministers Life* case. This has been done by counsel for the parties and by the Supreme Court of Wisconsin. The purpose of this brief is to set forth

the position of the State of California on the issues (1) whether the due process clause of Amendment 14 to the United States Constitution prevents the several states from regulating a mail order insurance company where the company solicits from and negotiates insurance with local residents, and (2) whether the McCarran Act, 15 U.S.C. §§ 1011-15, as construed in *State Bd. of Ins. v. Todd Shipyards*, 370 U.S. 451 (1962), prevents the above described regulation.

California is interested in the determination of these issues because a case similar to *Ministers Life* is now pending before the Supreme Court of California. Any action by this Court in this case will no doubt have an effect on the pending cases in California. The opinion of the California District Court of Appeal in the pending cases is citable at 244 A.C.A. 925, 53 Cal. Rptr. 636.

ARGUMENT.

I.

A State May Regulate Insurance Business Done Within Its Borders.

A. The Historical Context of the Meaning of "Doing Business."

The test of whether a company is doing business in a state so that it may be regulated and taxed by that state has been the subject of two definitions by this Court. One line of cases finds that a company is doing business only at the place the insurance contract is made, delivered, and paid for. *Allgeyer v. Louisiana,* 165 U.S. 578, 587-88 (1897); *St. Louis Compress Co. v. Arkansas,* 260 U.S. 346, 347-49 (1922); *Conn. General Co. v. Johnson,* 303 U.S. 77, 80-82 (1938). Another line of cases rejects a conceptualistic approach and tests the doing of business within a state by considering in addition to the place of contracting, the location of activity prior and subsequent to the making of the contract, and the degree of interest of the regulating state in the object insured. *Osborn v. Ozlin,* 310 U.S. 53, 66-67 (1940); *Hoopeston Canning Co. v. Cullen,* 318 U.S. 313, 316-19 (1943); *Travelers Health Assn. v. Virginia,* 339 U.S. 643, 647-49 (1950).

Between the decision of this Court in *Paul v. Virginia,* 75 U.S. (8 Wall.) 168 (1868), and the decision in *United States v. Southeastern Underwriters Assn.,* 322 U.S. 533 (1944), there was little restriction upon the regulation of the business of insurance by the several states. A state could, for example, impose any condition, including the obtaining of a license, as a prerequisite to the transaction of insurance business within the state by a foreign company. *Hooper v. California,* 155

U.S. 648, 655-56 (1895). The sole limitation upon the state's power to regulate the business of insurance existed under the due process clause of the Fourteenth Amendment. Under that clause, a state could regulate insurance business done within its borders, but could not regulate insurance business done outside the state. *Allgeyer v. Louisiana, supra,* 165 U.S. 578, 588, 590-91.

B. The Effect of the McCarran Act and the Todd Shipyards Case on the Definition of "Doing Business" Under the Due Process Clause.

In *United States v. Southeastern Underwriters Assn. supra,* 322 U.S. 533, this Court removed the business of insurance from state control by abandoning *Paul v. Virginia, supra,* 75 U.S. (8 Wall.) 168, and declaring the business to be interstate commerce. Congress promptly passed the McCarran Act in 1945 (15 U.S.C. §§ 1011-15), the purpose of which was to preserve existing and future state legislation regulating the insurance business without restriction by reason of the commerce clause. *Prudential Ins. Co. v. Benjamin,* 328 U.S. 408, 429-31 (1946); *State Bd. of Ins. v. Todd Shipyards,* 370 U.S. 451, 452 (1962).

While Congress has plenary power to regulate interstate commerce, it is for the courts to determine whether state regulations are consistent with due process. Thus, Congress, in the McCarran Act, could not and did not attempt to define the due process limitations on the states' power to regulate and tax the business of insurance, but instead, specifically left this question for judicial determination under the controlling decisions of the United States Supreme Court. *State Bd. of Ins. v. Todd Shipyards, supra* at 455-56.

Todd was the first case arising on facts occurring after the passage of the McCarran Act which dealt with the problem of doing business within a state in a manner sufficient to justify regulation and taxation under the due process clause. The Texas statute involved in the *Todd* case imposed a tax of 5 per cent of gross premiums upon any person who purchased from an insurer not licensed in Texas a policy covering risks within the state, unless the policy was purchased through an agent licensed in Texas. The statute was thus virtually identical to those declared invalid in *Allgeyer, supra,* 165 U.S. at 579, and *St. Louis Compress, supra,* 260 U.S. at 347. In the face of these two cases, the Attorney General of Texas, in the lower courts and in this Court, was compelled to argue that *Allgeyer* and *St. Louis Compress* were no longer binding in view of *Osborn, supra,* 310 U.S. 53, and *Hoopeston, supra,* 318 U.S. 313. *State Board of Insurance v. Todd Shipyards Corp.,* 340 S.W. 2d 339, 343-44 (Tex. Civ. App. 1960); *State Board of Insurance v. Todd Shipyards Corp.,* 343 S.W. 2d 241, 242 (Tex. 1961); *State Bd. of Ins. v. Todd Shipyards, supra,* 370 U.S. at 453.

Because Congress had relied on the *Allgeyer, St. Louis Compress,* and *Conn. General* cases in fashioning the scheme of regulation contained in the McCarran Act, this Court, in *Todd,* declined to overrule those earlier cases, although reserving the right to do so. 370 U.S. at 456-57. In taking this position, the Court in no way criticized the *Osborn* or *Hoopeston* decisions.

It must be conceded that by virtue of the *Todd* decision the validity of state regulation of insurance must be tested by the principles of due process as they existed prior to the McCarran Act. 370 U.S. at 457.

The principles of due process announced before the McCarran Act include the principles of the *Allgeyer* line of cases, as well as the *Hoopeston* line of cases. It is the position of the State of California that the facts of the instant case bring it within the *Hoopeston* principles and that the *Allgeyer* principle is inapplicable. It is our position that *Allgeyer* applies where an insurance company does no act, by mail or otherwise, in the regulating or taxing state, and all that is involved is the voluntary act of a resident in procuring insurance from an out-of-state insurer, but that *Hoopeston* applies where, as in the instant case, the company engages in a continuous series of activities in the regulating state resulting in substantial contacts with the state and its residents.[1]

II.

Regulation by Wisconsin of the Solicitation and Negotiation in Wisconsin of Insurance Business Does Not Offend the Due Process Clause of Amendment Fourteen to the United States Constitution Even Though the Solicitation Is Sent Into Wisconsin by Mail From Another State.

A. The Solicitation and Negotiation of a Mail Transaction Occurs Where the Mail Is Received.

Historically, in considering transactions carried on entirely by mail, both federal and state cases hold that solicitation and negotiation take place where the mail is received. *United States v. Thayer*, 209 U.S. 39, 42, 44 (1908) (solicitation of campaign funds occurs where letter soliciting same is received); *In re Palliser*, 136 U.S. 257, 265-68 (1890) (interstate solicitation by mail may be punished in state of receipt as if personally

[1]See note 3, *infra*, p. 9 and accompanying text.

done there); *Rose v. State*, 62 S.E. 117 (Ga. Ct. App. 1908) (interstate solicitation by mail for sale of liquor constitutes the doing of liquor business where letter is received, and person so soliciting may be punished where letter is received); *Golden & Co. v. Justice Court*, 23 Cal. App. 778, 140 Pac. 49 (1914) (solicitation of liquor sales by mail constitutes doing of business where mail is received, and sender is liable for doing illegal business); *Commonwealth v. Long*, 1 Pa. County Ct. 190 (1885) (interstate mail order insurance solicitation is doing insurance business in state of receipt, and requires a license); *Locknane v. United States Savings & Loan Co.*, 44 S.W. 977, 978 (Ky. Ct. App. 1898) (interstate mail order loan is doing lending business in state of loan's receipt and requires a license); *People v. Sansom*, 37 Cal. App. 435, 173 Pac. 1107 (1918) (crime of forgery occurs where forged document received in interstate mail); *People v. Fairfax Family Fund, Inc.*, 235 Cal. App. 2d 881, 47 Cal. Rptr. 812 (1964), *appeal dismissed*, 382 U.S. 1 (1965) (interstate mail order small loan negotiation may be licensed under section 24200 of California Financial Code.)[2] See also *United States v. Steinberg*, 62 F. 2d 77, 78 (2d Cir. 1932). That the principle announced in the above cases has also been held applicable to insurance is shown by *Commonwelath v. Long, supra*, 1 Pa. County Ct. 190 (1885), and *Karvalsky v. Becker*, 29 N.E. 2d 560, 562 (Ind. 1940).

---

[2]The Motion To Dismiss Appeal for lack of a substantial federal question in the *Fairfax* case was urged primarily on the basis of *Robertson v. California*, 328 U.S. 440.

B. In the Todd, Allgeyer, St. Louis Compress, and Conn. General Cases the Companies Did no Business in the Regulating State by Mail or Otherwise.

In the instant case there are many activities in Wisconsin by Ministers Life other than mail solicitation and negotiation, as pointed out at pages 3-7 of Appellee's Motion To Dismiss Appeal. We discuss the above mail solicitation cases to indicate that, historically, federal and state courts have had no difficulty in finding that a regular pattern of mail solicitation and negotiation in a state constitutes the doing of business where the mail is received, and if the mail results in the commission of a crime, *e.g.,* solicitation for the sale of alcohol or unauthorized insurance, the crime may be punished in the receiving state.

In embarking upon a discussion of the problems presented by the instant case, we think it is fair to say that *Allgeyer* did not hold that an insurance company is not doing business in a state when it regularly solicits and negotiates insurance there, whether by mail or otherwise. The *Allgeyer* Court did not reach this holding because the Court specifically stated that it was not "alluding to acts done within a state by an insurance company or its agents . . . which are in violation of the state statutes. . . ." 165 U.S. 578, 591. Nor was it discussing whether in the exercise of the police power a state could prohibit acts of insurance companies which conflict with state statutes. This issue "must be left for determination to each case as it arises." 165 U.S. 578, 590-91. The Court held only that a state, under the due process clause, could not prohibit one of its citizens from soliciting from a company and contracting for insurance with a company located in another state

while he remained within the state. 165 U.S. 578, 590-93. In reaching this decision the Court necessarily determined that a foreign insurance company is not doing business in a state where a citizen of that state writes to it in order to contract for insurance. Under such a circumstance the foreign company does no act in the state, and the Court, as above mentioned, specifically stated that its holding did not apply where the company did engage in acts in the state which violate state statutes.[8] The only act of any kind done in Louisiana by anyone in the *Allgeyer* case was the act of the resident in mailing a letter seeking insurance from the foreign company. No act, single or continuous, by mail or otherwise, was done in Louisiana by the insurance company from whom Mr. Allgeyer had obtained his insurance.

St. Louis Compress Co. v. Arkansas, supra, 260 U.S. 346, is a case on all fours with the *Todd* case. The Cotton Compress Company was a Missouri corporation licensed to, and doing, business in Arkansas. In Missouri, the company negotiated for and obtained fire insurance coverage for its property in Arkansas, from an insurer not licensed to do business in Arkansas. An Arkansas state imposed a 5 per cent premium tax.

---

[8]This analysis of *Allgeyer* is directly supported by *Bothwell v. Buckbee, Mears Co.*, 275 U.S. 274, 276-77 (1927). *Bothwell* is authority for the proposition urged here: that a state can require a license when an out-of-state insurance company solicits insurance from a resident, even though it could not do so when the resident voluntarily writes to the out-of-state company to procure insurance, and the company does no act in the licensing state. The federal and state mail solicitation cases discussed above show that the act of solicitation by a foreign company can occur through the use of the mails as well as by personal contact. The Wisconsin Supreme Court cites *Bothwell* at 141 N.W. 2d 287, 291 n. 2.

on fire insurance premiums paid to companies not authorized to do business in the state, whereas premiums paid to authorized companies were taxed at the rate of 2 per cent. The application of the statute to the facts there involved was held in violation of the due process clause. The decision states, 260 U.S. at 349:

> "This case is stronger than that of Allgeyer in that here no act was done within the State, whereas there a letter constituting a step in the contract was posted within the jurisdiction. It is true that the State may regulate the activities of foreign corporations within the State but it cannot regulate or interfere with what they do outside. . . ."

As in the *Allgeyer* case, the insurer in the *St. Louis Compress* case carried on no activities within the taxing state, by mail or otherwise.

The third case repeatedly mentioned in the *Todd* decision is *Conn. General Co. v. Johnson, supra,* 303 U.S. 77. There the Court struck down a California statute taxing premiums paid by a California licensed insurer to a foreign corporation, also licensed in California, for reinsurance of policies insuring the lives of California residents. The reinsurance contracts were made in Connecticut where the premiums were paid and where losses were payable. The reinsurance involved no action within California, not even the adjustment of claims. Upon those facts, the Court held that the due process clause precluded California from exercising any power to tax the premiums received by the reinsurer.

C. Hoopeston and Todd Discussed and Compared.

Viewed against the *Allgeyer* line of cases, where the company did nothing in the regulating or taxing state, and the previously cited federal and state cases in which mail solicitations from out of state were held to be doing business and, therefore, capable of being licensed and regulated in the receiving state, the decision in the *Hoopeston* case follows as a matter of course. *Hoopeston Canning Co. v. Cullen, supra,* 318 U.S. 313.

In *Haopeston,* residents of New York applied to, and after local investigation of the risks, if accepted, became members of an Illinois insurance association. The application for insurance and other necessary forms were signed by the applicant in New York and mailed to the association in Illinois. If the application and other forms were accepted, the contract of insurance was executed by the association and issued in Illinois, and sent by mail to the policyholder in New York. The association claimed that New York, under the due process clause, could not require it on the above facts to obtain a New York certificate of authority "Since the contracts of insurance are signed in Illinois and losses are paid by checks mailed from that state, the associations do no business in New York. . . ." 318 U.S. 313, 316.

In upholding the right of the State of New York to require the Illinois company to obtain a certificate of authority, this Court stated that:

(1) The power of a state to regulate an insurance transaction does not depend on a conceptualistic theory of where a contract is signed or to be performed. 318 U.S. at 316-17.

(2) An insurance company may be transacting insurance business in a state though it is "scrupulously careful to see that not a single contract is ever signed within that state's boundaries. . . ." 318 U.S. at 317.

> "We conclude that in determining whether insurance business is done within a state for the purpose of deciding whether a state has power to regulate the business, considerations of the location of activity prior and subsequent to the making of the contract, . . . of the degree of interest of the regulating state in the object insured, and of the location of the property insured are separately and collectively of great weight. . . ." 318 U.S. at 319.

Applying the *Hoopeston* criteria to the instant transactions, it is clear that only the formal acceptance of the insurance contract and the mailing of checks, and other forms, take place in the home state of the company. By virtue of the fact that the insured and his family reside in Wisconsin, the solicitation and negotiation of the contract occurs there, and the contract forms are executed there. Wisconsin is the center of activity in the instant insurance transactions both prior to and after the acceptance of the contract in the foreign state. Quite obviously, if the foreign company was free to disregard Wisconsin's regulatory requirements, if it did not honor its obligations to the policyholder, it is Wisconsin insureds who would be harmed. If Wisconsin is unable to regulate the foreign insurer doing business with an insured within Wisconsin, the result would inevitably be that even the system for control of purely local insurance would break down, as all those who wish to evade or avoid Wisconsin's laws need do is to establish an office and carry on their business by mail

from across the state line. See *Robertson v. California,* 328 U.S. 440, 458-60 (1946). Neither the *Todd* decision nor the due process clause, we submit, dictates such a result.

Comparing the *Todd* decision to *Hoopeston,* it is readily seen that *Todd* flows from the *Allgeyer* and *St. Louis Compress* rule that a state cannot regulate or tax an insurance transaction where the company does no act, by mail or otherwise, in the regulating or taxing state. As said by this Court in *Todd* (370 U.S. at 454-55):

> "The insurance transactions involved in the present litigation take place entirely outside Texas. The insurance, which is principally insurance against loss or liability arising from damage to property, is negotiated and paid for outside Texas. The policies are issued outside Texas. All losses arising under the policies are adjusted and paid outside Texas. The insurers are not licensed to do business in Texas, have no office or place of business in Texas, do not solicit business in Texas, have no agents in Texas, and do not investigate risks or claims in Texas.
>
> "The insured is not a domiciliary of Texas but a New York corporation doing business in Texas. Losses under the policies are payable not to Texas residents but to the insured at its principal office in New York City. *The only connection between Texas and the insurance transactions is the fact that the property covered by the insurance is physically located in Texas.*" (Emphasis added.)

Therefore, when *Todd* states that the McCarran Act established the *Allgeyer* line of cases as the outside limit

within which state regulation of insurance must be contained (370 U.S. at 456), this Court was reiterating the *Allgeyer* rule that a state cannot regulate a transaction if the only act occurring within the state is the act of an insured in writing to a foreign company in order to obtain insurance on his property. *Todd,* like the *Allgeyer* line of cases, involved a situation in which, after a meticulous review of the contacts Texas had with the particular transaction there involved, this Court determined that the insurance company had done no act in the State of Texas.

The instant case is governed by *Hoopeston* because the company does many acts in the State of Wisconsin (Motion to Dismiss, pp. 3-11), not the least of which is the regular solicitation and negotiation of insurance at the only place where such solicitation and negotiation can be effective—at the home of the insured, in Wisconsin. The state's interest in regulating these life insurance transactions with its residents must surely be primary over the interest which any other state might have in the transaction. *Watson v. Employers Liability Assur. Corp.,* 348 U.S. 66, 71-73 (1954); *Robertson v. California, supra,* 328 U.S. 440, 447, 457, 459-61 (1946).

D. Minnesota Commercial Men's Assn. v. Benn Discussed and Distinguished.

Appellants rely on an argument based upon *Minnesota Commercial Men's Assn. v. Benn,* 261 U.S. 140 (1923), that case law prior to 1945 had specifically determined that a state could not license or regulate a mail order insurance transaction. Thus, the argument goes, the state's inability to regulate a mail transaction

was incorporated into the McCarran Act. *Id.* Statement, page 16.

Benn was a service of process case. It involved no substantive licensing or regulation in the state in which the action arose. Since only "minimal" contacts are needed with the forum state in order to justify service of process upon a foreign corporation under the due process clause, and in *Benn* the service of process was found to violate due process, *ipso facto,* the argument goes, the state could not, under the due process clause, regulate or license the mail transaction since regulation and taxation require more substantial contacts.

The above argument would have some validity only if it could be said that the Association in *Benn* solicited insurance or did some other act in the forum state by mail or otherwise. We would then have a fact situation different than in the *Allgeyer* line of cases in which the insurance transactions were not initiated by the foreign companies, nor did the companies do any act in the forum state. But *Benn* did not differ from *Allgeyer.* In *Benn,* all of the company's offices and agents, and all of its activities, were in Minnesota. 261 U.S. at 142-43. The only act occurring in Montana, the forum state, was the act of a member of the Association soliciting new members. 261 U.S. at 145. If the member had been an agent of the company, the result would have been different,[4] but the Court said:

> "we think it cannot be said that the Association was doing business in Montana merely because one or more members, *without authority to obligate it,* solicited new members. . . ." 261 U.S. at 145. (Emphasis added.)

[4] *Bothwell v. Buckbee, Mears Co., supra,* 275 U.S. 274, 276-77 (1927).

While the Association was not bound by the acts of its members, it would have been bound if it had transported itself by mail into Montana and had itself solicited new members. This is the precise teaching of the federal and state mail order solicitation cases cited above.

The *Benn* case was effectively overruled in 1950 in *Travelers Health Assn. v. Virginia,* 339 U.S. 643, 647-49 (1950). So, while *Benn* is like *Allgeyer* and is therefore consistent with the resolution of *Allgeyer* and *Hoopeston* suggested herein, we have a direct authority abandoning the *Benn* decision in favor of the *Hoopeston* approach.[5] In overruling *Benn,* the Court in *Travelers Health* said (339 U.S. at 647-48):

> "But where business activities reach out beyond one state and create continuing relationships and obligations with citizens of another state, courts need not resort to a fictional 'consent' in order to sustain the jurisdiction of regulatory agencies in the latter state. And in considering what constitutes 'doing business' sufficiently to justify *regulation* in the state where the effects of the 'business' are felt, the narrow grounds relied on by the Court in the Benn case cannot be deemed controlling.
>
> ". . .
>
> ". . . 'great weight' [must be accorded] to the 'consequences' of the contractual obligations in the

[5]The decision in *Travelers Health* answers appellant's argument that the *Benn* rule (even if it stood for the proposition for which they cite it) was incorporated or frozen inexorably into the McCarran Act. *Id.* Statement, p. 16.

> state where the insured resided and the 'degree of interest' that state had in seeing that those obligations were faithfully carried out. . . ." (Emphasis added.)

Reading the holding in *Travelers Health Assn. v. Virginia, supra,* in conjunction with this Court's holding in *F.T.C. v. Travelers Health Assn.,* 362 U.S. 293, 298-99, 301-02 (1960), and the federal and state mail order solicitation and negotiation cases discussed above we think it is clear that the McCarran Act specifically supports regulation of the mail order insurance business by the state into which the mail is regularly sent by a foreign company. Under the McCarran Act, a state has the power to regulate all aspects of insurance business done within its borders, including (if state law specifically and effectively so provides) the regulation of deceptive mail advertising sent into the state. Since a state can regulate this type of deceptive advertising, and thereby displace regulation by the Federal Trade Commission, it follows that in areas other than advertising, where no federal jurisdiction is preserved, a state can regulate the insurance business solicited by such advertising, and of which the advertising is an essential part. Since the McCarran Act recognizes state regulation of mail advertising, it must also recognize the regulation of the business transacted within the state by means of such advertising, for it is in the state "where the business activities have their operative force." *F.T.C. v. Travelers Health Assn., supra,* 362 U.S. 293, 301-02 (1960).

CONCLUSION.

Because the appellant has failed to present a substantial federal question, it is respectfully requested that the Motion To Dismiss be granted.

Respectfully submitted,

THOMAS C. LYNCH,
Attorney General,
H. WARREN SIEGEL,
Deputy Attorney General,
Attorneys for Amicus Curiae.